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of Islamic Teachings

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Responsibilities of a Medical Doctor (Physician or Surgeon) in the Context of Islamic Teachings

Dr. Shams ul Basar

Medical profession is one of the most important professions in society. Getting knowledge of the medical profession is the collective duty of the Muslims. A Muslim society must have sufficient number of medical experts for the welfare and medical care of its members. It is evident that the Islamic teachings give importance to the medical science to be used for the welfare of mankind.

Keeping in view its importance in the Islamic teachings, it is understandable to say that there must be some sort of liability on the part of the doctor or the medical staff, for carrying out such sensitive and important jobs. It is also because the lives of mankind are involved with it. Thus the question arises that when a person does perform this sort of welfare job, is he/she responsible for any type of mishap if it occurs during his/her medication? If so, up to what extent? Thus the Islamic teachings determine their responsibilities as and when they perform their duties as medical practitioners. The present study mainly includes medical practitioners, i.e., the physicians/ surgeons and their concerned subordinates involved in different types of remedial measures or in other words the medical doctors and their technical staff.

Diseases are different in their nature, some of them are infectious and fatal. Usually the government and even the World Health Organization wants to prevent the societies from such fatal diseases. For this purpose vaccination is the latest technology, which is being used as a preventive precautionary measure. This task is being achieved through different organizations with the permission of the concerned governments and the governments themselves. Apart from

their achievements, although it is rare but some times the results of these vaccinations are in the negative. The question arises, whether the vaccinating doctor or the concerned staff is responsible for any damage, if it occurs or the liability lies upon the concerned department?

In the Islamic perspective it appears commendable when medical profession is intended to be used as a tool for giving advantage to the people under the inspiration of the teachings of the Qur'an and Sunnah of the Prophet (peace be upon him).

The Qur'an says:

وَمَنْ أَحْيَاهَا فَكَانَ أَحْيَا النَّاسَ جَمِيعاً

And if anyone saved a life, it would be as if he saved the life of the whole people.¹

In connection with the rights and obligations the Prophet (peace be upon him) said:

ولجسده عليك حق

And your body has the right upon you.²

In connection with the cure and welfare of the community Jābir b. 'Abd Allah (R.A.) narrates:

"نَهَى النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الرُّقْبِ فَجَاءَ إِلَيْهِ عُمَرُ بْنُ حَزْمٍ فَقَالَ لَهُ يَا أَيُّهَا الرَّسُولُ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ كَانَتْ عِنْدَنَا رُقْبٌ نَرْقِي بِهَا مِنَ الْعَقَبَ وَإِنَّكَ نَهَيْتَ مِنْ

الرّقى قال فعَرَضُوهَا عَلَيْهِ فَقَالَ: مَا أَرَى بِهَا بَاسًا مِنْ
اسْتِطاعَةِ مِنْكُمْ إِنْ يَنْفَعَ إِخْرَاهُ فَلِيَنْفَعَهُ

The Prophet (peace be upon him) disallowed incantation, so the family of 'Amr b. Hazm came and asked the Prophet (peace be upon him), "they had the cure for scorpion through incantation and you disallow that. They presented it before the Prophet (peace be upon him). The Prophet (peace be upon him) said that he did not see any harm in that, who so has the ability of public service to his brother, he must do it.³

As its importance is evident from the persuasion of the Prophet (peace be upon him) as Abū Hurayra (R.A.) narrates that the Prophet (peace be upon him) said:

مَا أَنْزَلَ اللَّهُ دَاءً إِلَّا نَزَّلَ لَهُ شَفَاءً

Allah has created remedy for each and every sort of malady.⁴

Abū al-Darda narrates that the Prophet (peace be upon him) said:

إِنَّ اللَّهَ أَنْزَلَ الدَّاءَ وَالدَّوَاءَ وَجَعَلَ لِكُلِّ دَاءٍ دَوَاءً فَتَدَاوِلُوا وَلَا
تَدَاوِلُوا بِالْمُحْرَمِ

Allah has created both malady and remedy and there is a remedy for each suffering, so do medication but not with those things which are prohibited.⁵

According to Imām Ghazālī medical profession is one of the collective duties (*furuq̄ kifāyah*). In this connection he says:

وَفِي الْبَلْدِ فَرُوضٌ كَفَائِيَاتٌ وَاقْرِبُهَا الطَّبَ

There are some collective duties in the (Muslim) society ... and medical science is the nearest i.e. most important.⁶

Imām al-Haramayn⁷ says:

"إِنَّ الْقِيَامَ بِفَرْضِ الْكَفَائِيَةِ أَفْضَلُ مِنْ فَرْضِ الْعَيْنِ لَا نَهَا لَوْ

ترك المتعين اختص هو بالائم، ولو فعله اختص بسقوط الفرض، وفرض الكفاية لو تركه لائم الجميع وفرض الكفاية لو فعله سقط الجرح عن الجميع ولا يشک في رجحان من حل محل المسلمين اجمعين في القيام بهم من مهام الدين

Fulfilling of the collective duty (*fard al-kifāyah*) is more better than the duty of an individual (*fard al-'ayn*). It is because, if an individual abandons his duty, the individual himself commits the sin, if he does perform that duty, he fulfills his duty, if collective duty is omitted, the whole community commits the sin, if collective duty (*fard-i-kifāyah*) is fulfilled, the whole community is acquitted ... and undoubtedly there is an inclination towards the replacement of the Muslims as a whole in the dissolution of the important religious tasks.⁸

Imām Shāfi'i says:

العلم علماً: علم الطب للإِبَدَانِ وعلم الفقه للإِدِيَانِ

Science is of two kinds, knowledge of the medical science is related to the physical aspect and understanding (knowledge) of the *Shari'ah* law is related to the religions.⁹

In Arabic literature the doctor or *tabib* is defined as under:

وَالطَّبِيبُ فِي الْأَصْلِ: الْحَادِقُ بِالْأَمْرِ عَارِفٌ بِهَا
وَبِهَاسْمِ الطَّبِيبِ الَّذِي يَحْالِجُ الْمَرْضَ وَنَحْوَهُمْ

An expert, having knowledge of the field (medical science) and in the same way, a person who does perform medical practice or any type of relevant profession, is named doctor or *tabib*.¹⁰

Importance of this knowledge can easily be judged from the following quotation, as Imām Ghazālī says:

وَالطَّبِيبُ يَقْدِرُ عَلَى التَّقْرِبِ إِلَى اللَّهِ تَعَالَى بِعِلْمِهِ فَيَكُونُ
ثَابِتًا عَلَى عِلْمِهِ مِنْ حِيثِ أَنَّهُ عَابِلٌ لِلَّهِ سَبَّحَهُ وَتَعَالَى

A doctor/*tabib* has the ability to get close to Almighty Allah on the basis of his knowledge, and will get reward because of his knowledge, as he is His agent.¹¹

Liabilities of a Doctor or Surgeon

When a person having no expertise or sufficient knowledge required for such a sensitive, crucial and important job, then the liability lies upon him. As 'Amru b. Shu'ayb narrates from his father through his grandfather, that the Prophet (peace be upon him) said:

من تطيب ولم يعلم منه طب قبل ذلك فهو ضامن

Who so did medication of some one without prior medical knowledge is held responsible.¹²

Thus prior knowledge of the medical profession is essential for the medication of an ailing or affected person. The author of *al-Tarātib al-Idāriyyah* says:

وفي رواية لابي نعيم من تطبيب ولم يكن بالطب معروفا
ناصاب نفسا فما دونها فهو ضامن

In the narration of Abi Na'im, who so did perform medication (of some one) without knowing the (medical) knowledge which resulted in the death or any sort of lesser harm to a person is held responsible.¹³

He again quotes:

وقال ابن طرhan هذا الحديث فيه احتياط وتحرز على الناس وحكم سياسي مع مافيه من الحكم الشرعي، وقوله تطبيب اي تعاطى علم الطب ولم يكن من اهله ومعناه من تعاطى علم الطب ولم يتقدم له به استعمال ومتى وتدرب مع الفضلاء قتل بطبعه فهو ضامن

Ibn Ṭarḥān said that there is caution, protection of the people and political order in this *hadīth* as well as the religious order. Here medication means that the doctor is responsible, if he does practise medical treatment without (medical) qualification, i.e., one

who does medical treatment without the practical knowledge, schooling and experience with the scholars, when some one dies because of his remedial measure.¹⁴

The following quotation will clear any sort of ambiguity in this regard. The author of *Jawāhir al-Iklīl* says:

يضمن الطيب ان جهل قواعد الطب او كان غير حاذق فيها، فداوى واتلفه بمداواته او احدث به عيما

The doctor or *tabib* is held responsible, if not acquainted with the principles of the medical knowledge or give medicine to the patient without expertise and as a result of his medication the patient dies or gets defected.¹⁵

Ibn Qudāmah says:

ان يكونوا ذوى حذق فى صناعتهم ولهم بها بصارة
ومعرفة لانه اذا لم يكن كذلك كان فعلا محظيا
فيضمن سراية

They (doctors) ought to be experts (in medical sciences) and must have perception and knowledge in their field, if not so the act (medical treatment) is forbidden and they will be held responsible for its running through.¹⁶

Ibn Qayyim is also of the same opinion as he says:¹⁷

اما الامر الشرعي فايجب الضمان على الطيب العاجل
فاذ اذا تعاطى علم الطب وعمله ولم يتقدم له به معرفته فقد
هجم بجهله على اتلاف الانفس واقدم على التهور على
ما لم يعلمه فيكون قد غرر بالعليل فيلزم به الضمان لذلك
وهذا الجماع من اهل العلم

The legal order as per *Shari'ah* law lays the responsibility on the incompetent doctor, when he tries for medical knowledge and its practical aspect and cannot get it. As a result, he/she (the doctor) causes deaths because of his/her skill, which he does not know, that amounts to the deceiving of the

patient and makes him/her for *dāman*.¹⁸ There is consensus of the scholars on this matter.

In the under developed societies there are different types of professionals who carry out different types of remedies. They are also responsible for their acts if not competent. The author of *Mu'in al-Hukam* gives an example in this regard:

رسالة حجام: قال الآخرون في عينك لحما ان لم تزله
عميت عينك فقال انا ازيله عنك فقطع الحجام لحمامن
عينه وهو ليس بحاذق في هذه الصنعة فعميت عين
الرجل يلزمها نصف الديمة

The barber's case: One said to another that there is flesh in your eye if not removed you will be blind (or you will lose your eyesight). He (the barber) said that he would remove it and removed the flesh from his eye, but he was not expert in the field (medical treatment). He lost his eye sight. He (the barber) is liable for half of *diyah*.¹⁹

Ibn Farhun endorses the said idea, he says:

اما اذا كان جاهلا او فعل غير ما اذن له فيله خطأ او يجاوز
الحد فيما اذن له فيه او قصر فيه عن القدر المطلوب ضمن
ماتولد عن ذلك

The *doctor/tabib* is held responsible for the consequences of his act when he is unaware (of the required knowledge) or get mistaken as a result of an unauthorized act or exceeded his limits, although he was permitted or did show deficiency in the required skill.²⁰

The participant Muslims scholars in the 8th seminar held at Aligarh University from 22.10.95 to 24.10.95 agreed upon the following suggestions:

A person has the right of medical practice, who has the knowledge and expertise in the field (of medicine) and his knowledge and expertise, is recognized by a competent authority. Practice in this profession (medication of the patients) is unlawful without proper knowledge and experience.²¹

They further concluded:

A person not permitted for medical practice by the Islamic law, if does so and as a result an extraordinary harm occurs to the patient, is liable for *daman*.²²

Competent Doctor in the Field of Medicine and Surgery, Showing Insufficiency/Inadequacy in His Act, Exceeding His Limits or Acts Without Permission

Al-Khatabi says:

لاعلم خلافا في ان المعالج اذا تعدى فتلف المرض كان
ضامنا

There is no disagreement (among the Muslim jurists) that the doctor is held responsible when (he) exceeded his limits and as a result the patient died.²³

Ibn Qudāmah says:

فاما ان كان حاذقا وحيث يده مثل ان تجاوز اقطع
في غير محل المقطع او في وقت لا يصلح فيه القطع
منه واشيه هذا ضمن فيه كله -

If he/she (the doctor) is competent and harmed some one due to exceeding of his/her limits (in medical care) or operated at improper place and time or similar to it, is held responsible for all his doing.²⁴

Deficiency on the Part of the Doctor or Medication/Cure Made Without Permission

The author of the *Jawāhir al-Iklīl* says:

علم قواعد التطبيب وقصر في تطبيبه فسرى
التلفا والتبيّب او علم قواعد التطبيب ولم يقصروا لكنه
طب المريض بلا اذن منه كمال وختن صغيرا بغير اذن
وليه او كبيرا قهرا عنه او هو نائم او اطعم مريضا دواء قهرا
عنه فتشاعن ذلك تلف وعيّب او طب باذن
غير معتبر فانه في ذلك كله يضمن ما ترتب عليه -

If (a *tabib*) knew the medical science and made short fall in the medical care (of the patient) which resulted in damage or defect, or knew the medical science and did medication without any shortfall but without the permission of the patient. For example, if a child was circumcised without the permission of his guardian or an old man by compulsion or when he was asleep or gave medicine to a patient by coercion and as a result damage or defect emerged or did medication without proper permission, ... In all these cases he (the doctor) is responsible (for damages) as applicable.²⁵

Following are the recommendations of the scholars who participated in the seminar held at Aligarh University from 22.10.95 to 24.10.95.

Even the competent doctor is liable for *dāman* if the operation became harmful or fatal while it was (done) without the permission of his/her guardian.²⁶

No Liability if Medical Care is made by a Competent Doctor with Proper Permission

Ibn Qayyim says:

طبيب حاذق اعطى الصنعة حقها ولم تجن يده فتولد من فعل الماذون من جهته الشارع ومن جهته من يطبه تلف العضو والنفس اوذهب صنته فهذا الاضمان عليه اتفاقا فانها سراية ماذون فيه وهذا كما اذا ختن الصبي في وقت وسن قابل للختان واعطى الصنعة حقها فتلف العفوا والصبي لم يضمن

It is agreed (among the jurists) that there is no liability on the part of the competent doctor/physician, legally permitted (by the *Shari'ah*), who is not involved in evil activities, fulfilling his professional duties at the best of his/her abilities and either naturally or consequently the patient dies or any of his organ is destroyed or any ability vanishes. It is because, the process was permitted, like the circumcision of a child, made at the proper time and age, while medication was made with the best of his abilities and as a result the organ or the child was spoilt, on its own in which there is no liability.²⁷

Following is a rare view not endorsed by other scholars:

وإذا أذن الرجل لحجام يفقصده او يختن ولده او البيطار في دابة فتولد من ذلك الفعل ذهاب نفس او عضو او تلف الدابة او العبد فلا اضمان عليه لاجل الاذقان قال ابن راشد وحکى القاضي ابو محمد رايه بالضمان لانه قتله خطاء

If a person allowed the barber for undergoing of a venesection (opening of a vein) or to circumcise his son or to the veterinary surgeon for an animal, which resulted in the loss of life or an organ of animal or human being. According to Ibn Rāshid there is no *daman* because of the permission while Qādī Abū Muhammad considered that, as *qatlah khata'*, liable for *dāman*.²⁸

Sayed al-Sabiq says:

اذا ماتت لا يجب عليه القود ويجب الديمة لان العلاج كان باذن المريض

He (the doctor) is not liable to retaliation but liable for *diyyah* if the patient dies as a result of his/ her medication, because it was carried out with the consent of the patient.²⁹

In this connection the following recommendations were made by the Muslim scholars who participated in the seminar held at Aligarh University from 22.10.95 to 24.10.95.

If the patient is unconscious and his/her guardians are not present on the spot and the doctor feels that an urgent operation is necessarily required to protect the life or an organ of the patient and did operate without permission, which resulted in the damage, the doctor is not liable for *dāman*.³⁰

Responsibility of the Doctors/Staff Involved in the Vaccination of the Masses

As far as the working medical staff (including doctor) is concerned, they are usually employees of the

government or legally recognized organizations. It is clear that the ruler has the authority and guardianship over his countrymen under which he can give such orders in their interest, in such cases the liability if so, is upon the employer, i.e., the government or the organizations.

Al-Mausu'ah al-Fiqhiyah quotes:

لو كان بأمر السلطان ليضمن، وجهه: أن له ولية عامة،
يصح أمره لدفع الضرر العام

There is no liability if it is conducted by the order of the ruler because he has general rule (guardianship) and lawful authority over them for removing of the common suffering.³¹

The following quotation is self explanatory in this respect:

ضمان الشخص لافعال التابعين له: ويتمثل هذا في
الخادم في المنزل، والطاهي في المطعم، والمستخدم في
المحل، ولعامل في المصنع والموظف في الحكومة وفي
سائق السيارة لمالكها كل في دائرة عمله

Liability of a person for his/her subordinates: it is similar to the servant in the house, a cook in the mess, an employee in the firm, a worker in the factory, a government official and the driver of the vehicle, every one working in the perimeter.

The same author further says:

الاصل ان الشخص مسئول عن ضمان الضرر الذي
ينشأ من فعله لاعن فعل غيره

In fact a person is liable for *dāman* of the (*darar*) harm that emerged from his own act and not of the others.

The author of *al-Dur al-Mukhtār* says:

ولا يضمن ما هلك من عمله الماذون فيه، لأن المنافع متى
صارت مملوكة للمستاجر، فاذا امره بالتصرف في ملكه،

صح يصير نائبًا منابه، فيصير فعله متقولاً اليه، كأنه فعله
بنفسه، فلهذا لا يضمنه وإنما الضمان في ذلك على
مخدومه

He (the doctor) is not liable for *dāman*, if death occurs as a result of his permitted act, because the benefits are the property of the employer. If he (the doctor) is allowed to do so, it is legal and he/she becomes assistant to him and therefore, he/she is not liable for *dāman* while his master is liable.

Regarding the responsibilities of the medical staff working under the control of the government or any other legally authorized organization, the author of *al-Qawāniḥ al-Fiqhiyyah* says:

فإن كان عارفاً فلایعاقب على خطئه، وإن كان غير عارف،
وغرم من نفسه، فيودب بالضرب والسجن

He/she will not be penalized on his/her mistake, if he/she knew (the medical science). If knew not and be mistaken, then he/she can be disciplined either through lashes or by imprisonment.³⁵

Conclusion

1. According to Islamic teachings the remedial measures of an unauthorized (legally) medical practitioner is forbidden.

2. A competent doctor/surgeon is not liable for *dāman* or penalty under the Islamic law, if he/she did medical care or operated honestly, with the best of his/her abilities, good intention and with care and caution but inspite of that it resulted in death or any harm to the patient.

3. Negligence, professional dishonesty, incompetence and unawareness of the nature of the remedies make the doctor/surgeon liable for retaliation *dāman* or penalties.

4. The doctor/surgeon is responsible, if made short falls, exceeded his limits or operated at improper time and place.

5. In normal circumstances permission from the patient or his guardian is necessary otherwise the

physician/surgeon will be held responsible for his/her unauthorized act.

6. The physician/surgeon is responsible for all types of coercion he/she has made for the purpose of medication, which results in any sort of harm to the patient.

7. Public servants are not liable for *daman* as they are like the servants who work on behalf of their masters as their representatives but they shall be penalized for any kind of negligence, shortfall or exceeding their limits by imprisonment or through lashes for the purpose of discipline.

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19. Al-Trabli, 'Ala al-Din, 'Abu al-Hasan, 'Ali b. Khalil, *Mu'in al-Hukkam fima yataradadu bayna al-khasmyn min al-ahkam*, p. 238, Haji 'Abd al-Ghaffar and sons, Qandahar, Afghanistan, Al-Haskafi, 'Ala al-Din, Muhammad, *al-Dur al-Mukhtar sharh Tanwir al-Absar*, 4:475, Nawalkishore, Lucknow, 1877/1294.
20. Ibn Farhun, Burhan al-Din, Ibrahim b. 'Ali, *Tabṣirat al-Hukkam fi usul al-aqdiyyah wa manahij al-ahkām*, on the margin of *Fath al-'ali al-Malik* of Alish Muhammad Ahmad, 2:348, *matba'ah Mustata al-babi*, 2nd edition, Cairo, 1937/1356.
21. Islamic publications, *Aham fiqhī faysalay* (Urdu), p. 85, India, N.D.
22. *Ibid.*
23. Ibn Qayyim, *Zad al-Ma'ad*, 2:109.
24. Ibn Qudāmah, *al-Mughni*, 5:540.
25. Salih Abdus Sami', *Jawahir al-Iklil*, 2:296, Ibn Qudamah, *al-Mughni*, 5:441.
26. Islamic publications, *Aham fiqhī faysalay* (Urdu), p. 85.
27. Ibn Qayyim, *Zad al-Ma'ad*, 3:109.
28. Ibn Farhun, *Tabṣirat al-Hukkam*, p. 348.
29. Sayed al-Sabiq, *Fiqh al-sunnah*, (on the margin), 2:581, N.D.
30. Islamic publications, *Aham fiqhī faysalay* (Urdu), p. 85.
31. *Al-Mausu'at al-fiqhiyyah*, wazarat al-awqaf wa shu'un al-Islamiyah, 28:277, Al-Haskafi, *al-Dur al-Mukhtar*, 5/43-44.
32. *Al-Mausu'at al-Fiqhiyyah*, 28:277.
33. *Ibid.*, 276.
34. Salih Abdus Sami', *Jawahir al-Iklil*, 2:296.
35. Ibn Juzai, Abu al-Qasim Muhammad b. Ahmad, *al-Qawānīn al-Fiqhiyyah*, p. 288, N.D. Salih Abdus Sami', *Jawāhir al-Iklil*, 2:296.